



July 6, 1999

Mr. Mark Sokolow
Port Arthur City Attorney
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR99-1871

Dear Mr. Sokolow:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126703.

The City of Port Arthur (the "city") received a request for information concerning two officers. It is our understanding that records responsive to this request are in the police department's internal file maintained pursuant to section 143.089(g) of the Local Government Code. Section 143.089 provides for the maintenance of a police civil service file and what may be kept in that file:

- (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:
 - (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;
 - (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in a police department's internal file, as provided in section 143.089(g):

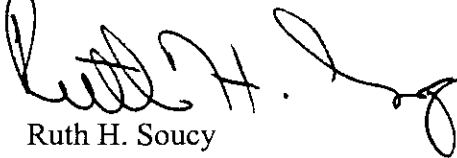
A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. As it is our understanding that the responsive records are maintained in a section 143.089(g) file, the records are confidential and may not be released.¹

¹We note that no such confidentiality provision governs information that is maintained in the civil service personnel files pursuant to section 143.089. Information maintained in the civil service personnel files must generally be released to the public upon request, unless some provision of chapter 552 of the Government

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 126703

Encl. Submitted documents

cc: Mr. Willie Coleman, Jr.
Bates & Coleman, P.C.
1010 Lamar Street, Suite 1200
Houston, Texas 77002
(w/o enclosures)

Code permits the civil service commission to withhold the information. Local Gov't Code § 143.089(f); Gov't Code §§ 552.006, .021; Open Records Decision No. 562 at 6 (1990) (construction of Local Gov't Code § 143.089(f) provision requiring release of information as required by law).